IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

Crl.MC.No. 3963 of 2006()

CP.5/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ADOOR

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PETITIONER/2ND ACCUSED:

RAGHUNATHAN,
S/O.KUTTAPPAN NIAR,
THUZHARAM PUTHEN VEEDU,
KODUMON VILLAGE.

BY ADV. SRI.P.HARIDAS

RESPONDENTS/COMPLAINANT:

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1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. SUB INSPECTOR OF POLICE,
KODUMON.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3963 of 2006

Dated this the 4th day of December 2006

O R D E R

The petitioner is the second accused in a prosecution initiated interalia under Section 3(1)(X) of the Scheduled Caste and Scheduled Tribe (Prevention of Attrocities) Act 1989.

2. The investigation is now complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. The proceedings have been registered as committal proceedings 5/02. The petitioner was not arrested in the course of investigation. The petitioner wants to appear before the learned Magistrate. He is willing to co-operate and take part in the further proceedings. He has come to this court with the prayer that he may be directed to be released on bail when he appears before the learned Magistrate and applies for bail. The anxiety is understandable as the offence is triable exclusively by a court of Sessions. The petitioner apprehends that the learned Magistrate may not grant him bail.

3. It is certainly for the petitioner to appear before the learned Magistrate and seek bail in the regular and ordinary course. I find no reason to assume that the learned Magistrate would not consider the application for bail on merits, in accordance with law and

expeditiously. It has been repeatedly held that notwithstanding the fact that the offence is triable exclusively by a court of Sessions, the learned Magistrate can consider the application for bail. In the following decisions, the said principles has been reiterated - Shanu v. State of Kerala [2000(3)KLT 452], Ali v. State of Kerala [2000(2)KLT 280], Krishnakumar v. State of Kerala [2005(1) KLD(Cri)42] and P.P.Kader v. State of Kerala [2005(1)KLD(Cri)250]. The court must consider the same in the light of the principles enuntiated in the above decisions.

4, In the result, this Crl.M.C is allowed in part. It is directed that if the petitioner appears before the learned Magistrate and applies for bail, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law, in the light of the dictum in the above decisions and expeditiously - on the date of surrender itself, unless compelling and exceptional reasons are there.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006